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- SUBCOMMITTEE ON INTELLECTUAL PROPERTY, COMPETITION, AND THE INTERNET

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- *RANKING MEMBER* — SUBCOMMITTEE ON OVERSIGHT

**COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY**

- SUBCOMMITTEE ON ENERGY AND ENVIRONMENT
- SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

**Congress of the United States**  
**House of Representatives**

Washington, DC 20515

**ZOE LOFGREN**

16TH DISTRICT, CALIFORNIA

May 18, 2011

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CHAIR, CALIFORNIA DEMOCRATIC  
CONGRESSIONAL DELEGATION

CO-CHAIR, CONGRESSIONAL CAUCUS ON  
VIETNAM

CO-CHAIR, DIVERSITY & INNOVATION CAUCUS

CO-CHAIR, CONGRESSIONAL HAZARDS CAUCUS

W.D. Cadman

Dear Mr. Cadman:

Thank you for your letter, dated May 9, 2011, discussing problems that plague the Immigration and Customs Enforcement's (ICE's) deployment of the Secure Communities program. As you may know, I previously called upon the Department of Homeland Security (DHS) Office of Inspector General and the ICE Office of Professional Responsibility to conduct thorough investigations into any false and misleading statements that were made to local governments, the public, and Members of Congress in connection with the deployment of the program. I have been informed that the Inspector General will conduct a general review of the program, which will include an investigation into any such statements. Upon receipt of your letter, I forwarded the materials to the Inspector General for his review. A copy of my letter is enclosed.

Thank you again for reaching out to my office to provide your account of these events. Please feel free to contact me in the future if you would like to speak further about this matter.

Sincerely,



Zoe Lofgren  
Ranking Member

Subcommittee on Immigration Policy and Enforcement

Encl.

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CO-CHAIR, CONGRESSIONAL HAZARDS CAUCUS

May 17, 2011

Charles K. Edwards  
Acting Inspector General  
U.S. Department of Homeland Security  
245 Murray Drive, SW, Bldg. 410  
Washington, DC 20528

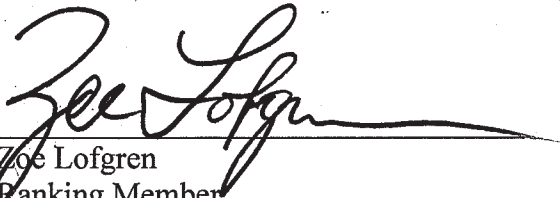
Dear Inspector General Edwards:

Thank you for responding to my letter, dated April 28, 2011, calling for a thorough investigation into any false and misleading statements that may have been made in connection with the deployment of Immigration and Customs Enforcement's (ICE's) Secure Communities program. I am encouraged that your office has decided to examine generally ICE's deployment of this program. I also am pleased that this investigation will be broad in scope and will include the extent to which the program focuses on the identification and removal of "dangerous criminal aliens, . . . the cost of the program, equitable use at different communities, the accuracy of ICE's data collection, and . . . an examination of the controversy regarding communities' requirement to participate and the ability to 'opt out' of the program."

In your letter, you indicate that your investigation may commence in the first quarter of fiscal year 2012. I believe, however, that an investigation of the Secure Communities program is pressing, and I urge you to begin your review as soon as possible. For your review, I enclose a letter that I recently received from Dan Cadman, a former contractor who served as an ICE Regional Coordinator within the Secure Communities program. While I understand from Director Morton that Mr. Cadman was terminated for authoring "several unacceptable e-mails," Mr. Cadman's letter makes clear that further investigation is needed to determine whether other DHS and ICE personnel or contract staff were responsible for any misleading statements that were made.

As you requested in your letter, I am happy to make my staff available to meet with your office to discuss the scope and timing of your review.

Sincerely,



Zoe Lofgren  
Ranking Member

Subcommittee on Immigration Policy and Enforcement

cc: Janet Napolitano, Secretary, Department of Homeland Security  
John T. Morton, Director, U.S. Immigration and Customs Enforcement

Encls.

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April 28, 2011

Charles K. Edwards  
Acting Inspector General  
U.S. Department of Homeland Security  
245 Murray Drive, SW, Bldg. 410  
Washington, DC 20528

Timothy Moynihan  
Assistant Director  
Office of Professional Responsibility  
Immigration and Customs Enforcement  
P.O. Box 144755  
Pennsylvania Ave. NW  
Washington, DC 20044

Dear Inspector General Edwards and Assistant Director Moynihan:

In recent months, it appears that Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) personnel and contract staff may have made false and misleading statements to local governments, the public, and Members of Congress in connection with the deployment of the Secure Communities program. In response to a Freedom of Information Act request, ICE and the Federal Bureau of Investigations (FBI) have released many thousands of pages of documents, including internal e-mails and memoranda. Having conducted with my legal staff an initial review of the documents that have been made public, I believe that some of these false and misleading statements may have been made intentionally, while others were made recklessly, knowing that the statements were ambiguous and likely to create confusion. I now write to request that your offices conduct thorough investigations into any misconduct, including possible violations of criminal law, revealed by the documents. As the identities of many persons were redacted from publicly available documents and some documents were withheld entirely or have yet to be made public, it is important that you review the conduct of all relevant persons in order to determine who bears responsibility for any misconduct that you find.

The statements in question deal primarily with the issue of whether Secure Communities is a mandatory program that all states and localities must participate in or whether localities may be permitted to "opt out" of the program out of a concern that participation will present a barrier to community policing efforts and will make it more difficult to implement a law enforcement strategy that meets public safety needs. Under the Secure Communities program, fingerprints collected by local law enforcement



agencies upon booking that are routinely submitted to State Identification Bureaus (SIBs) in order to be checked by the FBI Criminal Justice Information Services Division (CJIS) Integrated Automated Fingerprint Identification System (IAFIS) are now checked against immigration databases and provided to ICE for purposes of immigration enforcement. Some localities have asked that fingerprints submitted to their SIBs be checked against criminal, but not immigration, databases, and Members of Congress and their offices have sent letters, asked questions for the record, and held briefings on that topic.

According to a recent statement by a DHS official, "Secure Communities is not voluntary and never has been." (Lee Romney, *Congresswoman Calls for Investigation of Enforcement Program That Screens for Illegal Immigrants in Jails*, LOS ANGELES TIMES, April 22, 2011). Unfortunately, this statement cannot be reconciled with many of the public and private statements made by DHS and ICE personnel over the past two years. For instance, more than two years ago, ICE responded to a written question for the record posed by then-Chairman David Price that "ICE does not require any entity to participate in the information sharing technology at the state or local level."<sup>1</sup> Similarly, in an August 26, 2009, e-mail exchange specifically on the topic of whether Secure Communities is mandatory or voluntary, one ICE official wrote that Secure Communities "will remain voluntary at both the State and Local level. . . . Until such time as localities begin to push back on participation, we will continue with this current line of thinking."<sup>2</sup> A memorandum prepared in 2009 for ICE Director John Morton on the topic of voluntariness acknowledges that "[t]o date, Secure Communities has stated in various arenas, including Congress, that state and local participation in IDENT/IAFIS Interoperability is voluntary."<sup>3</sup>

In order to clarify significant confusion about the program, I wrote to DHS Secretary Janet Napolitano on July 27, 2010, specifically asking "how local law enforcement agencies may opt out of Secure Communities by having the fingerprints they collect and submit to the SIBs checked against criminal, but not immigration, databases." In her response, Secretary Napolitano described what steps must be taken by a locality "that does not wish to participate in the Secure Communities deployment plan" and explained that "[i]f a local law enforcement agency chooses not to be activated in the Secure Communities deployment plan, it will be the responsibility of that agency to notify its local ICE field office of suspected criminal aliens." This response clearly indicated to me that localities were permitted to opt out of the program in the manner described in my original letter. And according to one recently released e-mail by an FBI/CJIS employee, my conclusion should have come as a surprise to no one; commenting on an earlier, but nearly identical, draft of the Secretary's response to my letter, the FBI employee wrote: "reading the response alone would lead one to believe that a site can elect to never participate should they wish (at least it reads that way on my small [Blackberry] screen)."<sup>4</sup>

One issue at the heart of any deceptive statements by DHS or ICE personnel appears to be ICE's decision to adopt a counterintuitive and misleading definition of the term "opt out" to refer only to the ability of localities to avoid receiving the results of immigration checks conducted on fingerprints submitted to the SIBs, but not the use of

fingerprints to check immigration databases. According to one e-mail exchange, this decision was approved by unnamed ICE front office personnel orally, rather than in writing, in order to give officials “plausible deniability.”<sup>5</sup>

It is unacceptable for government officials to essentially lie to local governments, Members of Congress, and the public. Unfortunately, my review of the e-mails that have been made public suggests that some government personnel have been less than completely honest about this program over the last two years. It is critically important that you thoroughly investigate this matter and that any misconduct result in real consequences. I am available if you have any questions or would like to discuss this matter in greater detail. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Zoe Lofgren", is written over the printed name and title.

Zoe Lofgren  
Ranking Member

Subcommittee on Immigration Policy and Enforcement

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<sup>1</sup> ICE FOIA 10-2674.001832.

<sup>2</sup> ICE FOIA 10-2674.001831.

<sup>3</sup> ICE FOIA 10-2674.0007299.

<sup>4</sup> FBI-SC-1719.

<sup>5</sup> ICE FOIA 10-2674.0007174.





**Homeland  
Security**

MAY 10 2011

The Honorable Zoe Lofgren  
Committee on the Judiciary  
Subcommittee on Immigration, Policy and Enforcement  
1401 Longworth House Office Building  
Washington, DC 20515

Dear Congresswoman Lofgren:

Thank you for your letter requesting that we determine whether Department of Homeland Security (DHS) and United States Immigration and Customs Enforcement (ICE) personnel and their contractors made false and misleading statements to local governments, the public, and Members of Congress regarding the deployment of the Secure Communities program. Specifically, you have asked how DHS employees and contractors characterized the requirement for the participation or the ability to "opt out" of the Secure Communities program for all states and localities.

During our fiscal year 2012 planning conference, we proposed a review of the Secure Communities program. The objective of that review will be to determine the extent to which ICE uses the program to identify and remove dangerous criminal aliens from the United States. That objective encompasses determinations of the cost of the program, equitable use at different communities, the accuracy of ICE's data collection, and to your concern, an examination of the controversy regarding communities' requirement to participate and ability to "opt out" of the program.

We anticipate starting this review in the first quarter of fiscal year 2012. Prior to starting our review, we will meet with your staff to discuss our approach and timeline for covering this topic and to learn from them additional details that we should consider.

Should you have any questions, please call me, or ask your staff to contact Marta Metelko our Director, Office of Legislative Affairs, at (202) 254-4100.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles K. Edwards".

Charles K. Edwards  
Acting Inspector General

cc: John T. Morton, Director, United States Immigration and Customs Enforcement



**U.S. Immigration  
and Customs  
Enforcement**

April 28, 2011

The Honorable Zoe Lofgren  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Lofgren:

I write to express my regret for the confusion regarding the Secure Communities program and the issue of whether a jurisdiction may "opt out" of the program. The Department of Homeland Security's Immigration and Customs Enforcement (ICE) takes full responsibility for the confusion and the inconsistent statements the agency has made about participation in the program. We are reviewing the circumstances behind these statements and have already taken several steps to address this issue—including the termination of a contractor who authored several unacceptable e-mails.

Secure Communities provides ICE with the unprecedented capability to focus its enforcement efforts on criminal aliens booked into our nation's jails. By removing those aliens whose criminal history demonstrates a willingness to violate our laws, ICE is better able to fulfill its responsibility to keep our communities safe. As such, enhancement of public safety through the expansion of Secure Communities is one of our top priorities.

The data clearly demonstrate that Secure Communities has significantly enhanced ICE's ability to focus its removal resources on convicted criminals. Between October of 2008 and the end of FY 2010, ICE increased the number of convicted criminals who were removed from the country by 71 percent. At the same time, the number of non-criminals removed dropped by 23 percent. This shift would not have been possible without Secure Communities.

Secure Communities does not require state and local law enforcement to provide the federal government additional information or modify any existing procedures. Pursuant to existing law enforcement practices, criminal suspects are routinely fingerprinted when arrested and jailed for a criminal offense. After booking a suspect in jail, the arresting agency voluntarily submits those fingerprints to the Department of Justice (DOJ). As mandated by federal law governing information sharing between federal agencies, the fingerprints submitted to DOJ are then automatically submitted to ICE and checked against DHS immigration databases. This fingerprint check allows ICE to identify and remove individuals who are in our country unlawfully and who have been arrested for a criminal offense.

Secure Communities does not permit, much less require, state and local governments to enforce immigration law. On the contrary, under Secure Communities the decision and authority to initiate removal proceedings rests entirely with ICE. As we have publicly stated on several



occasions, immigration enforcement is a federal responsibility which requires a uniform national approach. Indeed, federal law requires information sharing between federal agencies expressly for purposes of immigration enforcement. As a result, state and local jurisdictions cannot prohibit the information sharing between the Departments of Justice and Homeland Security upon which the Secure Communities program rests.

Although ICE focuses first on the most serious criminal offenders, ICE remains committed to removing other individuals who are in the country unlawfully and have committed a criminal offense. As ICE has made clear, it also prioritizes the removal of aliens who have been previously removed and reentered the United States unlawfully or are fugitives subject to a final order or removal. The removals that result from Secure Communities also reflect these priorities.

While we regret the manner in which the program has been previously discussed, we are proud of the contributions this program has made to our efforts to enhance public safety.

Thank you for your interest in Secure Communities program. Please do not hesitate to contact me if you have additional concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "John Morton", with a long, sweeping horizontal line extending to the right.

John Morton  
Assistant Secretary